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ВСЕМИРНАЯ ОРГАНИЗАЦИЯ
ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИC. PCT 1026
- 04

The International Bureau of the World Intellectual Property Organization (WIPO) presents its compliments and has the honor to transmit herewith documents PCT/R/WG/7/2, 3, 4, 5, 6, 8 and 9, prepared for the seventh session of the *Working Group on Reform of the Patent Cooperation Treaty (PCT)*, which will be held in Geneva from May 25 to 31, 2005.

The working documents are also available on WIPO's Web site (see <http://www.wipo.int/pct/en/meetings>). *For*

April 7, 2005

Enclosures: documents PCT/R/WG/7/2, 3, 4, 5, 6, 8 and 9

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C. PCT 1026
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Le Bureau international de l'Organisation Mondiale de la Propriété Intellectuelle (OMPI) présente ses compliments et a l'honneur de transmettre ci-joint le document PCT/R/WG/7/9, et les documents 2, 3, 4, 5, 6 et 8 (en version anglaise), élaborés en vue de la septième session du *Groupe de travail sur la réforme du Traité de coopération en matière de brevets (PCT)*, qui se tiendra à Genève du 25 au 31 mai 2005. La version française des documents PCT/R/WG/7/2, 3, 4, 5, 6 et 8 suivra.

Les documents de travail sont aussi disponibles sur le site Internet de l'OMPI (voir <http://www.wipo.int/pct/fr/meetings>). 

Le 7 avril 2005

Pièces jointes : document PCT/R/WG/7/9
documents PCT/R/WG/7/2, 3, 4, 5, 6 et 8 (version anglaise)

СВАЕСОД

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INTERNATIONAL PATENT COOPERATION UNION (PCT UNION)

WORKING GROUP ON REFORM OF THE PATENT COOPERATION TREATY (PCT)

Seventh Session
Geneva, May 25 to 31, 2005

MISSING ELEMENTS AND PARTS OF THE INTERNATIONAL APPLICATION

Document prepared by the International Bureau

SUMMARY

1. This document contains further revised proposals for amendment of the Regulations under the PCT¹ related to the according of the international filing, including proposals concerning the correction of defects under Article 11(1), the later furnishing of parts of the description, claims or drawings, and the incorporation by reference of certain elements or parts.
2. Earlier proposals, discussed at the sixth session of the Working Group, have been revised taking into account the discussions, and the agreement reached, at that session and the comments received on preliminary draft documents made available since then. The main differences in comparison with the proposals considered at the sixth session concern the following: (i) the proposed wording of the statement of incorporation by references under Rule 4.18; (ii) the proposal that the applicant would have to "confirm" the incorporation by

¹ References in this document to "Articles" and "Rules" are to those of the Patent Cooperation Treaty (PCT) and the Regulations under the PCT ("the Regulations"), or to such provisions as proposed to be amended or added, as the case may be. References to "national laws", "national applications", "the national phase", etc., include reference to regional laws, regional applications, the regional phase, etc.

reference of certain elements or parts rather than, as in previous drafts, “request,” subsequent to the filing of the international application, that the elements or parts be considered to have been contained in the application as filed; (iii) the proposed structure of Rule 20; (iv) the addition of a reservation provision for designated Offices in relation to the provisions concerning incorporation by reference; and (v) the wording of Rule 82ter as proposed to be amended.

BACKGROUND

3. At its first session, the Working Group on Reform of the Patent Cooperation Treaty (PCT) discussed proposals designed to align the PCT with the requirements of the Patent Law Treaty (PLT), based on document PCT/R/WG/1/5.

4. Among the PLT-related proposals contained in document PCT/R/WG/1/5 were proposals to conform the PCT requirements relating to the later furnishing of parts of the description, claims or drawings to those of the PLT (see document PCT/R/WG/1/5, Annex I). However, due to time constraints, the proposals could not be discussed during the first session of the Working Group.

5. For the second session of the Working Group, the International Bureau prepared a document outlining possible further PLT-related changes to the PCT, suggesting, in general, that those PLT-related proposals contained in document PCT/R/WG/1/5 which had not been discussed during the first session of the Working Group would not need to be addressed as matters of high priority. With regard to the proposal to conform the above mentioned PCT requirements relating to the later furnishing of parts of the description, claims or drawings to those of the PLT, as contained in Annex I to document PCT/R/WG/1/5, it was suggested that “[i]n light of the discussions at the first session of the Working Group, this proposal is considered to have a relatively low priority and will not be resubmitted for consideration by the Working Group until a later date” (see document PCT/R/WG/2/6, paragraph 9; the Working Group at its second session was unable in the time available to consider document PCT/R/WG/2/6 – see document PCT/R/WG/2/12, paragraph 59).

6. At its third session, the Working Group reviewed proposals for reform which had already been submitted to the Committee on Reform of the PCT or the Working Group but not yet considered in detail and agreed on the priority of those proposals, with a view to their inclusion in the work program of the Working Group. Among the proposals reviewed by the Working Group was the proposal to conform the PCT requirements relating to the later furnishing of parts of the description, claims or drawings to those of the PLT, as originally submitted to the Working Group in document PCT/R/WG/1/5. The Working Group agreed that the International Bureau should resubmit the proposals for further consideration by the Working Group (see the summary of the session by the Chair, document PCT/R/WG/3/5, paragraphs 35 to 40, in particular, paragraph 38).

7. Further revised proposals relating to the later furnishing of parts of the description, claims or drawings prepared by the International Bureau were considered by the Working Group at its fourth, fifth and sixth session. As had been agreed by the Working Group at its fifth session (see the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraph 92), the revised proposals discussed by the Working Group at its sixth session included proposals not only to allow the applicant to “incorporate by reference” certain parts of the description, claims or drawings (similar to the provision under PLT Article 5(6)) without loss of the filing date, but also to allow the applicant to

“incorporate by reference”, for the purposes of the international filing date, the part which on the face of it appears to be a description and the part which on the face of it appears to be a claim or claims (in effect, similar to the “reference filing” provision under PLT Article 5(7) in respect of the description and any drawings) where any such element is not otherwise contained in the international application.

8. The summaries by the Chair of the sessions of the Working Group set out the status of the matters discussed by the Committee and the Working Group, respectively, noting the range of views expressed and areas where agreement had been reached, and identifying what future work needed to be undertaken (see documents PCT/R/WG/4/14, paragraphs 45 to 71, PCT/R/WG/5/13, paragraphs 28 to 62, and PCT/R/WG/6/12, paragraphs 58 to 67).

9. The Working Group’s discussions at its most recent (sixth) session (see document PCT/R/WG/6/12, paragraphs 58 to 67) are outlined in the following paragraphs:

“58. Discussions were based on documents PCT/R/WG/6/4 and 4 Add.1.

“59. The Working Group was generally in favor of the proposals contained in the document and invited the Secretariat to prepare revised proposals, for consideration at the next session, taking into account the comments and suggestions set out in the following paragraphs.

“60. While a number of questions remained to be addressed, the revised drafting of Rules 4.18 and 20 in document PCT/R/WG/6/4 Add.1 was in general preferred to that in document PCT/R/WG/6/4. The references to Rules 4.18 and 20 in the following paragraphs are thus to those Rules as they appear in document PCT/R/WG/6/4 Add.1.
Rules 4.18 and 20

“61. Some delegations expressed the view that there was no basis in the Treaty itself for the incorporation by reference of a missing element or missing part of an international application and therefore believed that an amendment of the Treaty would be required in order to implement provisions of the kind envisaged.

“62. One delegation expressed the view that, since incorporation by reference of a missing element under Rule 4.18 would be conditional on compliance with the requirements of Rule 20.5(a) and (b), the proposed provision was not compatible with Articles 11(2) and 14(2) since, “at the time of receipt” of the international application, the missing element was not incorporated in the international application. The legal fiction established by Rule 4.18, according to which the missing element would be considered to have been incorporated by reference *ab initio* in the international application only if the requirements of Rule 20.5(a) and (b) were subsequently complied with, would not be sufficient to overcome the delegation’s concerns. In that delegation’s view, it would be necessary for such incorporation by reference to be unconditional so as to comply with those Articles.

“63. One delegation expressed concerns as to compatibility of the proposal with the Articles of the Treaty and noted that the issue of missing parts could be dealt with, so far as a designated State was concerned, by appropriate provisions in the national law. That delegation and others stated that, in the event that the proposals were to proceed by way of amendment of the Regulations, a transitional reservation for designated Offices would therefore be needed in addition to that proposed for receiving Offices.

“64. In response to a query concerning Rule 4.18 as to whether the applicant would need to establish on the face of the application documents that something was missing from them before an incorporation by reference could be effective, two delegations suggested that Rule 4.18 should be interpreted broadly so as to enable the incorporation by reference of any part or element contained in the priority document concerned, without having to satisfy such a test. One delegation pointed to Note 5.21 on PLT Article 5(6)(b) (filing date where missing part of description or drawing is filed), which referred to the question “whether, in a particular case, a missing part of the description or a missing drawing is completely contained in the earlier application.” Another delegation observed that there was no apparent policy reason for applying a strict interpretation of the provisions since the time frame was such that the missing part or element would always be included in the application as published, and there was no possibility of abuse since the relevant subject matter had to be contained in the earlier application.

“65. A suggestion by a representative of users that it should be possible for the incorporation by reference of a missing part or element of an international application to be effected by acts taken in the national phase was opposed by several delegations. The International Bureau confirmed that the Comment on Rule 4.18 was not intended to imply such a possibility and should be modified accordingly.

“66. In reply to a query by a delegation, the International Bureau explained that Rule 4.18 used the wording “The request *may* contain a statement ...” since it did not seem appropriate to require the applicant to include such a statement in all cases. A reference to the statement was required in Rule 4 since only contents listed in that Rule could be included in the request. In practice, however, it was envisaged that the request form would include a pre-printed statement under Rule 4.18.

“67. In response to a query by a delegation, the Secretariat confirmed that, under Rule 20.5(a)(i) as proposed to be amended in document PCT/R/WG/6/4 Add.1, it was intended that, for the purposes of incorporation by reference, the priority claim must have been contained in the international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office.”

10. Annex I to the present document contains further revised texts of the proposals related to the according of the international filing date, including proposals related to “incorporation by reference” of certain elements and parts of the international application, contained in the Annexes to documents PCT/R/WG/6/4 and 4 Add.1. The proposals have been further revised so as to take into account the discussions and agreements reached at the sixth session of the Working Group, as summarized in paragraph 9, above, and comments received on preliminary draft documents for the seventh session of the Working Group which had been made available for comment on the WIPO website as PCT/R/WG/7 Paper No. 1 and Paper No. 1 Rev. Noting that the Working Group, at its sixth session, generally preferred the revised drafting of Rules 4.18 and 20 in document PCT/R/WG/6/4 Add.1 to that in document PCT/R/WG/6/4 (see the summary of the sixth session by the Chair, document PCT/R/WG/6/12, paragraph 60, reproduced in paragraph 9, above), the further revised proposals for Rules 4.18 and 20 appearing in Annex I to this document are, by and large, based on those Rules as they appeared in document PCT/R/WG/6/4 Add.1.

11. For information and clarity, the proposals for amendment of Rule 20 are presented both in the form of a marked-up text of Rule 20 as proposed to be amended (contained in Annex I) and in the form of a “clean” text of Rule 20 as it would stand after amendment (contained in Annex II).

12. The main features of the further revised proposals are outlined in the following paragraphs.

**INTERNATIONAL FILING DATE; CORRECTION OF DEFECTS UNDER
ARTICLE 11(2); LATER FURNISHING OF MISSING PARTS; INCORPORATION BY
REFERENCE**

Title of Rule 20

13. In the context of aligning the PCT requirements concerning the later furnishing of certain elements or parts of the application to those of the PLT, it is proposed to change the title of Rule 20 to read “International Filing Date” rather than, as at present, “Receipt of the International Application”, so as to more appropriately cover the subject matter of Rule 20, namely, the according of the international filing date under Article 11.

Structure of Rule 20

14. It is proposed to revise the structure of Rule 20 by moving to the Administrative Instructions matters of detail related to the stamping of dates, etc., leaving the Rule to deal only with matters related to the according of the international filing date, including procedures and consequences concerning the correction of defects under Article 11(2), the later furnishing of missing parts, and the incorporation by reference of certain elements or parts.

15. So as to avoid adding further complexity to the system, it is no longer proposed, as in document PCT/R/WG/6/4 Add.1, to deal with the procedures and consequences relating both to the correction of certain defects under Article 11(1)(iii)(d) and (e) (the international application does not contain the element referred to in Article 11(1)(d) or(e)), and to the later furnishing of certain parts of description, claims and drawings, in the same Rule.

16. Furthermore, it is no longer proposed, as in document PCT/R/WG/6/4 Add.1, to deal with the procedures and consequences relating to both the possible incorporation by reference of the elements referred to in Article 11(1)(iii)(d) and (e), and of parts of the description, claims and drawings, in the same Rule.

17. Rather, it is proposed to deal with those issues in separate Rules, as follows:

(a) Rule 20.3 as proposed to be amended deals with the procedures and consequences relating to *all* Article 11(1) defects, and with the consequences where the applicant confirms, in accordance with Rule 20.6 as proposed to be amended (see below), the incorporation by reference of any element referred to in Article 11(1)(iii)(d) or (e).

(b) Rule 20.5 as proposed to be amended deals with the procedures and consequences relating to the later furnishing of certain parts of the description, claims and drawings, and with the consequences where the applicant confirms, in accordance with Rule 20.6 as proposed to be amended (see below), the incorporation by reference of any such part.

(c) Rules 4.18 as proposed to be amended deals with the possible inclusion in the request of a statement of incorporation by reference of both the elements referred to in Article 11(1)(iii)(d) or (e) and of parts of the description, claims or drawings. Rule 20.6 as proposed to be amended deals with the required confirmation of any such statement of incorporation by reference.

18. The proposed amendments would also align the order of the provisions dealing with the according of the international filing date with the (logical) order in which a receiving Office determines whether to accord, and which date to accord, as the international filing date, as follows:

- Rule 20.1 Determination Under Article 11(1)
- Rule 20.2 Positive Determination Under Article 11(1)
- Rule 20.3 Defects Under Article 11(1)
- Rule 20.4 Negative Determination Under Article 11(1)
- Rule 20.5 Missing Parts
- Rule 20.6 Confirmation of Incorporation by Reference of Elements and Parts
- Rule 20.7 Time Limit
- Rule 20.8 Incompatibility With National Laws

Determination under Article 11(1) (Rule 20.1)

19. Rule 20.1 corresponds to present Rule 20.4, except for some minor drafting changes. It deals with general questions related to the determination under Article 11(1).

Positive Determination under Article 11(1) (Rule 20.2)

20. Rule 20.2 as proposed to be amended by and large corresponds to present Rule 20.5, except that paragraphs (a) and (b) are proposed to be amended so as to clarify that this Rule deals with the according of the international filing date where the receiving Office determines that the international application, *at the time of receipt*, fulfills all requirements under Article 11(1).

Apparent Defects Under Article 11(1) (Rule 20.3)

21. With regard to the provisions relating to the correction of apparent Article 11(1) defects, the revised proposals contained in Annex I continue to make a distinction between, on the one hand, defects under Article 11(1)(i), (ii) and (iii)(a) to (c) (relating to nationality and residence requirements, language, indication that application is intended as an international application, designations of countries, and name of applicant), and, on the other hand, defects under Article 11(1)(iii)(d) and (e) (relating to a missing description or missing claim or claims; see Rule 20.3(a)(ii) as proposed to be amended), noting that, depending on the applicant's action, the according of the international filing date may or may not be affected.

22. Where the receiving Office finds that any of the requirements of Article 11(1)(i), (ii) and (iii)(a) to (c) is or appears to be not fulfilled, it will invite the applicant to furnish the required correction under Article 11(2). The furnishing by the applicant of the required correction will always affect the according of the international filing date, which will be the date on which the receiving Office receives that correction (see Rule 20.3(a)(i) and 20.3(b)(i) as proposed to be amended), provided that all other requirements of Article 11(1) are complied with.

23. Where the receiving Office finds that any of the requirements of Article 11(1)(iii)(d) and (e) is not or appears not to be fulfilled, it will invite the applicant to either furnish the required correction or confirm that the element concerned referred to in Article 11(1)(iii)(d) or (e) is incorporated by reference under Rule 4.18. Where the applicant furnishes the required correction under Article 11(2), the international filing date will be the date on which the receiving Office receives the required correction (see Rule 20.3(a)(ii) and 20.3(b)(i) as proposed to be amended), provided that all other requirements of Article 11(1) are complied with.

24. However, where the applicant confirms the incorporation by reference of an element referred to in Article 11(1)(iii)(d) or (e) which is completely contained in an earlier application the priority of which is claimed in the international application, that element will be considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, and the international filing date will be the date on which all Article 11(1) requirements are fulfilled (see Rule 20.3(a)(ii) and 20.3(b)(ii) as proposed to be amended) (see paragraphs 30 to 39, below, with regard to the inclusion in the request of the statement of incorporation by reference and the requirement to confirm that statement).

Negative Determination Under Article 11(1) (Rule 20.4)

25. Rule 20.4 as proposed to be amended corresponds to present Rule 20.7 and deals with the “negative determination under Article 11(1),” that is, the refusal by the receiving Office to accord an international filing date. It is proposed to be amended so as to take into account the possibility that the applicant, rather than filing a correction under Article 11(2), may confirm the incorporation by reference of an element referred to in Article 11(1)(iii)(d) or (e).

Missing Parts (Rule 20.5)

26. As indicated above, it is proposed to deal with the provisions relating to the later furnishing of certain parts of the description, claims or drawings (not including the case where an entire element referred to in Article 11(1)(iii)(d) or (e) is or appears to be missing but including the case where all of the drawings are or appear to be missing) in a separate Rule (Rule 20.5 as proposed to be amended). Similar to the consequences explained above in relation to the applicant’s actions following an invitation to correct a defect under Article 11(1)(iii)(d) and (e) (see paragraph 23 above), depending on the applicant’s action following an invitation to furnish a part of the description, claims or drawings which is or appears to be missing, the according of the international filing date may or may not be affected.

27. Where the applicant furnishes a missing part to the receiving Office on or before the date on which all of the requirements of Article 11(1) are fulfilled but within the applicable time limit under Rule 20.7, that part will be included in the purported international application and the international filing date will be the date on which all of the requirements of Article 11(1) are fulfilled (see Rule 20.5(b) as proposed to be amended).

28. Where the applicant furnishes a missing part to the receiving Office after the date on which all of the requirements of Article 11(1) were fulfilled but within the applicable time limit under Rule 20.7, that part will be included in the international application and the international filing date will be corrected to the date on which the receiving Office received that part (see Rule 20.5(c) as proposed to be amended).

29. Where the applicant confirms, in accordance with Rule 20.6(a), that a part of the description, claims or drawings was incorporated by reference under Rule 4.18 and the receiving Office finds that all the requirements of Rule 4.18 and 20.6(a) are complied with, that part is considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, and the international filing date will be the date on which all of the requirements of Article 11(1) are fulfilled (see Rule 20.5(d) as proposed to be amended).

Statement of Incorporation by Reference; Confirmation of Such Statement (Rules 4.18 and 20.6)

30. Under proposed new Rule 4.18, where the international application, on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, claims the priority of the earlier application, the applicant would be entitled to include in the request a statement of incorporation by reference that, where any element of the international application referred to in Article 11(1)(iii)(d) or (e) or any part of the description, claims or drawings referred to in Rule 20.5(a) which is not otherwise contained in the international application is completely contained in the earlier application, that element or part is, subject to confirmation under Rule 20.6(a), incorporated by reference in the international application for the purposes of Rule 20.6.

31. It is proposed that the applicant would have to "confirm" the incorporation by reference of any element of the international application referred to in Article 11(1)(iii)(d) or (e) or any part of the description, claims or drawings, rather than, as was proposed in documents PCT/R/WG/6/4 and 4 Add.1, that the applicant must, subsequent to the filing of the international application, "request" that the missing element or part be considered to have been contained in the application as filed, noting that the incorporation by reference itself has already been effected by including the statement under Rule 4.18 in the international application as filed.

32. PLT Rule 2(4) leaves it at the option of the Office of a PLT Contracting Party to require the furnishing by the applicant of a *simple copy* of the earlier application (within the time limit for making the request for incorporation by reference) and/or to invite the applicant to furnish a *certified copy* of the earlier application (within four month from the date of the invitation to furnish a missing part or within the 16-month time limit for furnishing the priority document, whichever expires earlier) in order to determine whether the missing part is completely contained in the earlier application (PLT Rule 5.2(b)(ii) contains a similar provision with regard to "reference filing").

33. In view of the practical difficulties experienced by applicants in obtaining priority documents from certain Offices, it does not appear realistic to require the applicant to furnish a certified copy of the earlier application (the "priority document") within a time limit which is shorter than the time limit under present Rule 17.1(a) (noting that the time limit under Rule 17.1(a) is, in effect, the date of international publication of the international application concerned, and that the applicant may, in accordance with Rule 17.1(c), validly furnish the priority document to any designated Office even after national phase entry). On the other hand, it does not appear possible to require the receiving Office to delay making its decision under Rule 20.6(b) on the incorporation by reference until after the expiration of the time limit under Rule 17.1(a).

34. In order to solve the problem, it is proposed to proceed as follows. Generally, under Rule 20.6(a) as proposed to be amended, the applicant would be required, for the purposes of incorporation by reference of a missing element or part under Rule 20.6, to furnish only a simple copy of the earlier application, within the applicable time limit under Rule 20.7 unless, within that time limit, the priority document is available to the receiving Office because the applicant has already complied with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document.

35. Where the priority document was available to the receiving Office within the applicable time limit under Rule 20.7, the receiving Office would base its finding under Rule 20.6(b) on the priority document, and the front page of the published pamphlet would contain, for the benefit of designated and elected Offices, an indication to that effect.

36. Where, however, the priority document was not available to the receiving Office within the applicable time limit under Rule 20.7 because the applicant did not, within that time limit, comply with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document, the receiving Office would base its finding under Rule 20.6(b) on the simple copy of the earlier application furnished by the applicant under Rule 20.6(a). The front page of the published pamphlet would contain an indication to the effect that the applicant, for the purposes of Rule 20.6(a)(ii), relied on a separately submitted (non-certified) copy of the earlier application rather than on compliance with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document.

37. In the latter case, during national phase procedures, where the priority document continues not to be available to the designated or elected Office because the applicant still has not complied with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document, or where the priority document is available to the designated or elected Office but that Office finds that that the element or part concerned is not completely contained in the priority document, that Office would be entitled to treat the application, in the case of a missing element, as if the international filing date had been accorded under Rule 20.3(b)(i) (see paragraph 23, above) or, in the case of a missing part, as if the international filing date had been accorded under either Rule 20.5(b) or (c), as the case may be (see paragraphs 27 and 28, above), provided that the Office would have to first give the applicant an opportunity to furnish the priority document within a time limit which is reasonable under the circumstances (see proposed new Rule 82ter.1(b)). In order to be able to make a determination under proposed new Rule 82ter.1(b), the designated or elected Office would be permitted to require the applicant to furnish a translation of the priority document where that document is not in a language accepted by the Office for the purposes of national processing (see proposed new Rule 51bis.1(e)(ii)).

Time Limit (Rule 20.7)

38. Rule 20.7 as proposed to be amended provides for the time limits within which the applicant may furnish corrections of Article 11(1) defects (including the furnishing of missing elements), furnish missing parts or confirm the incorporation by reference of elements or parts.

Incompatibility With National Laws (Rule 20.8)

39. As had been suggested during the sixth session of the Working Group (see the summary of the sixth session by the Chair, document PCT/R/WG/6/12, paragraph 63), reservation provisions are included in respect of both receiving Offices and designated Offices whose applicable national law is not compatible with the envisaged amendments of the PCT Regulations concerning the incorporation by reference of elements referred to in Article 11(1)(iii)(d) and (e) and parts of the description, claims or drawings (see Rule 20.8 as proposed to be amended).

Alignment of certain related requirements under the PCT with those under the PLT

40. In the context of “missing element” and “missing part” requirements, it is also proposed to align certain related requirements under the PCT with those under the PLT, in particular time limits for compliance with non-filing date related requirements (see Rule 26 as proposed to be amended).

41. The Working Group is invited to consider the proposals contained in the Annexes to this document.

[Annex I follows]

ANNEX I

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:²

MISSING ELEMENTS AND PARTS OF THE INTERNATIONAL APPLICATION

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² Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. Certain provisions that are not proposed to be amended may be included for ease of reference.

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Rule 4

The Request (Contents)

4.1 Mandatory and Optional Contents; Signature

(a) and (b) [No change]

(c) The request may contain:

(i) and (ii) [No change]

(iii) declarations as provided in Rule 4.17,

(iv) a statement as provided in Rule 4.18.

[COMMENT: The proposed addition of item (iv) reflects the proposed addition of new Rule 4.18, below.]

(d) [No change]

4.2 to 4.17 [No change]

4.18 Statement of Incorporation by Reference

Where the international application, on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, claims the priority of an earlier application, the request may contain a statement that, where an element of the international application referred to in Article 11(1)(iii)(d) or (e) or a part of the description, claims or drawings referred to in Rule 20.5(a) is not otherwise contained in the international application but is completely contained in the earlier application, that element or part is, subject to confirmation under Rule 20.6, incorporated by reference in the international application for the purposes of Rule 20.6.

[COMMENT: See paragraphs 30 and 31 in the main body of this document.]

4.19 4.18 Additional Matter

(a) The request shall contain no matter other than that specified in Rules 4.1 to 4.18 4.17, provided that the Administrative Instructions may permit, but cannot make mandatory, the inclusion in the request of any additional matter specified in the Administrative Instructions.

(b) If the request contains matter other than that specified in Rules 4.1 to 4.18 4.17 or permitted under paragraph (a) by the Administrative Instructions, the receiving Office shall *ex officio* delete the additional matter.

[COMMENT: The renumbering is consequential on the proposed addition of new Rule 4.18 (see above).]

Rule 12

**Language of the International Application and Translation
for the Purposes of International Search and International Publication**

12.1 [No change]

12.1bis Language of Elements and Parts Furnished Under Rule 20.3, 20.5 or 20.6

An element referred to in Article 11(1)(iii)(d) or (e) furnished by the applicant under Rule 20.3(b) or 20.6(a) and a part of the description, claims or drawings furnished by the applicant under Rule 20.5(b) or 20.6(a) shall be in the language of the international application as filed or, where a translation of the application is required under Rule 12.3(a) or 12.4(a), in both the language of the application as filed and the language of that translation.

[COMMENT: Proposed new Rule 12.1bis would have to be further amended should it be agreed to amend the Regulations in relation to “international publication in multiple languages” as proposed in PCT/R/WG/7/4.]

12.2 [No change]

12.3 Translation for the Purposes of International Search

(a) and (b) [No change]

[Rule 12.3, continued]

(c) Where, by the time the receiving Office sends to the applicant the notification under Rule 20.2(c) ~~20.5(e)~~, the applicant has not furnished a translation required under paragraph (a), the receiving Office shall, preferably together with that notification, invite the applicant:

[COMMENT: The renumbering is consequential on the proposed renumbering of present Rule 20.5, below.]

(i) and (ii) [No change]

(d) and (e) [No change]

12.4 [No change]

Rule 20 [“marked-up” copy]³

International Filing Date Receipt of the International Application

[COMMENT: See paragraph 13 in the main body of this document.]

20.1 Date and Number

(a) Upon receipt of papers purporting to be an international application, the receiving Office shall indelibly mark the date of actual receipt on the request of each copy received and the international application number on each sheet of each copy received.

(b) The place on each sheet where the date or number shall be marked, and other details, shall be specified in the Administrative Instructions.

20.2 Receipt on Different Days

(a) In cases where all the sheets pertaining to the same purported international application are not received on the same day by the receiving Office, that Office shall correct the date marked on the request (still leaving legible, however, the earlier date or dates already marked) so that it indicates the day on which the papers completing the international application were received, provided

³ A “clean” copy of the text of Rule 20 as it would stand after amendment is contained in Annex II.

[Rule 20, continued]

- (i) where no invitation under Article 11(2)(a) to correct was sent to the applicant, the said papers are received within 30 days from the date on which sheets were first received;
- (ii) where an invitation under Article 11(2)(a) to correct was sent to the applicant, the said papers are received within the applicable time limit under Rule 20.6;
- (iii) in the case of Article 14(2), the missing drawings are received within 30 days from the date on which the incomplete papers were filed;
- (iv) the absence or later receipt of any sheet containing the abstract or part thereof shall not, in itself, require any correction of the date marked on the request.

(b) Any sheet received on a date later than the date on which sheets were first received shall be marked by the receiving Office with the date on which it was received.

20.3 *Corrected International Application*

In the case referred to in Article 11(2)(b), the receiving Office shall correct the date marked on the request (still leaving legible, however, the earlier date or dates already marked) so that it indicates the day on which the last required correction was received.

20.1 20.4 Determination Under Article 11(1)

(a) Promptly after receipt of the papers purporting to be an international application, the receiving Office shall determine whether the papers fulfill ~~comply~~ with the requirements of Article 11(1).

[COMMENT: Drafting change only (see the wording of Article 11(1)).]

(b) For the purposes of Article 11(1)(iii)(c), it shall be sufficient to indicate the name of the applicant in a way which allows the his identity of the applicant to be established even if the name is misspelled, the given names are not fully indicated, or, in the case of legal entities, the indication of the name is abbreviated or incomplete.

[COMMENT: Drafting change only.]

(c) [No change] For the purposes of Article 11(1)(ii), it shall be sufficient that the part which appears to be a description (other than any sequence listing part thereof) and the part which appears to be a claim or claims be in a language accepted by the receiving Office under Rule 12.1(a).

[COMMENT: Rule 19.4(a)(ii) would apply where an element referred to in Article 11(1)(iii)(d) or (e) or a part of the description, claims or drawings referred to in Rule 20.5(a)(ii) is considered, under Rule 20.6(b) as proposed to be amended to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office but is not in the same language accepted by the receiving Office as the international application as filed. Such application, containing such element or part incorporated by reference, would be considered to have been received by the receiving Office on behalf of the International Bureau as receiving Office under Rule 19.1(a)(iii), which accepts international applications in any language.]

[Rule 20.1, continued]

(d) [No change] If, on October 1, 1997, paragraph (c) is not compatible with the national law applied by the receiving Office, paragraph (c) shall not apply to that receiving Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1997. The information received shall be promptly published by the International Bureau in the Gazette.

[COMMENT: A decision by the Assembly may be necessary to ensure that transitional reservations that were made under existing Rule 20.4(d) continue to be effective under that provision as renumbered Rule 20.1(d).]

20.2 20.5 Positive Determination Under Article 11(1)

[COMMENT: Renumbering and clarification only.]

(a) If the receiving Office determines that, at the time of receipt of the papers purporting to be an international application, the requirements of determination under Article 11(1) were fulfilled is positive, the receiving Office shall accord as the international filing date the date of receipt of the international application. stamp on the request the name of the receiving Office and the words “PCT International Application,” or “Demande internationale PCT.” If the official language of the receiving Office is neither English nor French, the words “International Application” or “Demande internationale” may be accompanied by a translation of these words in the official language of the receiving Office.

[COMMENT: See paragraph 20 in the main body of this document.]

(b) The receiving Office shall stamp the request of the international application which it has accorded an international filing date as prescribed by the Administrative Instructions. The copy whose request has been so stamped shall be the record copy of the international application.

(c) [No change] The receiving Office shall promptly notify the applicant of the international application number and the international filing date. At the same time, it shall send to the International Bureau a copy of the notification sent to the applicant, except where it has already sent, or is sending at the same time, the record copy to the International Bureau under Rule 22.1(a).

20.3 Defects Under Article 11(1)

(a) Where, in determining whether the papers purporting to be an international application fulfill the requirements of Article 11(1), the receiving Office finds that any of the requirements of Article 11(1) are not, or appear not to be, fulfilled, it shall promptly invite the applicant, as applicable and at the applicant's option:

(i) to furnish the required correction under Article 11(2); or

(ii) where the requirements concerned are those relating to an element referred to in Article 11(1)(iii)(d) or (e), to confirm in accordance with Rule 20.6(a) that the element is incorporated by reference under Rule 4.18;

and to make observations, if any, within the applicable time limit under Rule 20.7. If that time limit expires after the expiration of 12 months from the filing date of any application whose priority is claimed, the receiving Office shall call that circumstance to the attention of the applicant.

[COMMENT: See paragraphs 21 to 23 in the main body of this document. See proposed new Rule 4.18, above, and proposed new Rule 20.6, below, concerning the incorporation by reference of an element referred to in Article 11(1)(iii)(d) or (e). It is also proposed to change the term "one year" (as used in the last sentence of present Rule 20.6) to "12 months" for consistency with Rule 4.10(a)(i) and Article 4C(1) of the Paris Convention.]

[Rule 20.3, continued]

(b) Where, following an invitation under paragraph (a) or otherwise:

(i) the applicant furnishes to the receiving Office the required correction under Article 11(2) after the date of receipt of the purported international application but on a later date falling within the applicable time limit under Rule 20.7, the receiving Office shall accord that later date as the international filing date and proceed as provided in Rule 20.2(b) and (c);

[COMMENT: See paragraphs 22 and 23 in the main body of this document.]

(ii) an element referred to in Article 11(1)(iii)(d) or (e) is, under Rule 20.6(b), considered to have been contained in the international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, the receiving Office shall accord as the international filing date the date on which all of the requirements of Article 11(1) are fulfilled and proceed as provided in Rule 20.2(b) and (c).

[COMMENT: See paragraphs 23 and 24 in the main body of this document.]

(c) 20.8 If the receiving Office later discovers, or on the basis of the applicant's reply realizes, that it has erred in issuing an invitation under paragraph (a) to correct since the requirements of provided for under Article 11(1) were fulfilled when the papers were received, it shall proceed as provided in Rule 20.2 Rule 20.5.

[COMMENT: It is proposed to move the contents of present Rule 20.8 into proposed new paragraph (c) of Rule 20.3.]

20.4 20.7 Negative Determination Under Article 11(1)

[COMMENT: Renumbering and clarification only.]

(a) If the receiving Office does not, receive, within the applicable time limit under Rule 20.7, a correction or confirmation referred to in Rule 20.3(b), within the prescribed time limit, receive a reply to its invitation to correct, or if a the correction or confirmation has been received offered by the applicant but the application still does not fulfill the requirements of provided for under Article 11(1), the receiving Office it shall:

- (i) promptly notify the applicant that the his application is not and will not be treated as an international application and shall indicate the reasons therefor;
- (ii) notify the International Bureau that the number it has marked on the papers will not be used as an international application number;
- (iii) keep the papers constituting the purported international application and any correspondence relating thereto as provided in Rule 93.1; and
- (iv) [No change] send a copy of the said papers to the International Bureau where, pursuant to a request by the applicant under Article 25(1), the International Bureau needs such a copy and specially asks for it.

[COMMENT: See paragraph 25 in the main body of this document.]

20.5 Missing Parts

(a) Where, in determining whether the papers purporting to be an international application fulfill the requirements of Article 11(1), the receiving Office finds that a part of the description, claims or drawings is or appears to be missing, including the case where all of the drawings are or appear to be missing but not including the case where an entire element referred to in Article 11(1)(iii)(d) or (e) is or appears to be missing, it shall promptly invite the applicant, as applicable and at the applicant's option:

(i) to complete the purported international application by furnishing the missing part;

(ii) to confirm, in accordance with Rule 20.6(a), that the part was incorporated by reference under Rule 4.18;

and to make observations, if any, within the applicable time limit under Rule 20.7. If that time limit expires after the expiration of 12 months from the filing date of any application whose priority is claimed, the receiving Office shall call that circumstance to the attention of the applicant.

[COMMENT: See paragraph 26 in the main body of this document.]

[Rule 20.5, continued]

(b) Where, following an invitation under paragraph (a) or otherwise, the applicant furnishes to the receiving Office, on or before the date on which all of the requirements of Article 11(1) are fulfilled but within the applicable time limit under Rule 20.7, a missing part referred to in paragraph (a) so as to complete the international application, that part shall be included in the application and the receiving Office shall accord as the international filing date the date on which all of the requirements of Article 11(1) are fulfilled and proceed as provided in Rule 20.2(b) and (c).

[COMMENT: See paragraph 27 in the main body of this document.]

(c) Where, following an invitation under paragraph (a) or otherwise, the applicant furnishes to the receiving Office, after the date on which all of the requirements of Article 11(1) were fulfilled but within the applicable time limit under Rule 20.7, a missing part referred to in paragraph (a) so as to complete the international application, that part shall be included in the application, and the receiving Office shall correct the international filing date to the date on which the receiving Office received that part and proceed as provided for in the Administrative Instructions.

[COMMENT: See paragraph 28 in the main body of this document. The Administrative Instructions would have to be modified so as to prescribe the procedure to be followed by the receiving Office with regard to notifications to be sent to the International Bureau and the International Searching Authority, in particular in the case where the record and search copies have not yet been transmitted by the time when the missing part is included and the filing date corrected.]

[Rule 20.5, continued]

(d) Where, following an invitation under paragraph (a) or otherwise, a part referred to in paragraph (a) is, under Rule 20.6(b), considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, the receiving Office shall accord as the international filing date the date on which all of the requirements of Article 11(1) are fulfilled and proceed as provided in Rule 20.2(b) and (c).

[COMMENT: See paragraph 29 in the main body of this document.]

(e) Where the international filing date has been corrected under paragraph (c), the applicant may, in a notice submitted to the receiving Office within one month from the date of the notification under paragraph (c), request that the missing part concerned be disregarded, in which case the missing part shall be considered not to have been furnished and the correction of the international filing date under that paragraph shall be considered not to have been made, and the receiving Office shall proceed as provided for in the Administrative Instructions.

[COMMENT: See PLT Article 5(6)(c). The proposed wording (“request to disregard”) differs from that used in the PLT (“withdraw”) so as to avoid confusion with withdrawals under Rule 90bis. The Administrative Instructions would have to be modified so as to prescribe the procedure to be followed by the receiving Office with regard to notifications to be sent to the International Bureau and the International Searching Authority, in particular in the case where the record and search copies have not yet been transmitted by the time a notification by the applicant under paragraph (e) is received by the receiving Office.]

20.6 Confirmation of Incorporation by Reference of Elements and Parts

(a) The applicant may submit to the receiving Office, within the applicable time limit under Rule 20.7, a written notice confirming that an element or part is incorporated by reference in the international application under Rule 4.18, accompanied by:

[COMMENT: See paragraphs 30 and 31 in the main body of this document.]

(i) a sheet or sheets embodying the element or part concerned;

(ii) where the applicant has not already complied with Rule 17.1(a), (b) or (b-bis) in relation to the priority document, a copy of the earlier application as filed;

[COMMENT: See paragraphs 32 to 37 and in the main body of this document.]

(iii) where the earlier application is not in the language in which the international application is filed, a translation of the earlier application into that language or, where a translation of the international application is required under Rule 12.3(a) or 12.4(a), a translation of the earlier application into both the language in which the international application is filed and the language of that translation; and

[COMMENT: See PLT Rule 2(4)(iii).]

[Rule 20.6(a), continued]

(iv) in the case of a part of the description, claims or drawings, an indication as to where that part is contained in the earlier application.

[COMMENT: See PLT Rule 2(4)(vi).]

(b) Where the receiving Office finds that the requirements of Rule 4.18 and paragraph (a) have been complied with and that the element or part referred to in paragraph (a) is completely contained in the earlier application concerned, that element or part shall be considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office.

[COMMENT: It is proposed that the effectiveness of a confirmation of incorporation by reference under Rule 4.18 be subject to a finding by the receiving Office rather than operating automatically. This appears to be necessary if designated Offices and third parties are to be able to rely on the procedure followed with a reasonable degree of certainty. Furthermore, it is envisaged that the Administrative Instructions would be modified so as to provide for the receiving Office to stamp sheets incorporated under Rule 20.6 with words such as "INCORPORATED BY REFERENCE—RULE 20.6", and to provide that a notification by the receiving Office to the International Bureau that a missing element or part has been incorporated by reference would include an indication as to whether the applicant, for the purposes of Rule 20.6(a)(ii), relied on compliance with Rule 17.1(a), (b) or (b-bis) in relation to the priority document or on a separately submitted (non-certified) copy of the earlier application concerned. That information would be published on the front page of the published pamphlet (see proposed new Rule 48.2(b)(v), below).]

20.7 Time Limit

The applicable time limit referred to in Rules 20.3(a), 20.3(b), 20.4, 20.5(a), (b) and (c), and 20.6(a) shall be:

(i) where an invitation under Rule 20.3(a) or 20.5(a), as applicable, was sent to the applicant, [one month] [two months] from the date of the invitation;

(ii) where no such invitation was sent to the applicant, [one month] [two months] from the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office;

provided that any correction under Article 11(2), or any confirmation under Rule 20.6(a) of the incorporation by reference of an element referred to in Article 11(1)(iii)(d) or (e), that is received by the receiving Office after the expiration of the applicable time limit under this Rule but before that Office sends a notification to the applicant under Rule 20.4(i) shall be taken into account in determining whether the papers purporting to be an international application fulfill the requirements under Article 11(1).

[COMMENT: See PLT Article 5(3) and PLT Rule 2(1) (notification in case of non-compliance with a filing date requirement); PLT Article 5(4) and PLT Rule 2(2) (subsequent compliance with a filing date requirement); PLT Article 5(6) and PLT Rule 2(3)(i) and (ii) (filing date where missing part of description or drawing is filed); and PLT Article 5(7) and PLT Rule 2.5(b)(ii) (filing date where description and drawings are replaced by reference to previous filed application). While the PLT provides for the time limit under item (ii) only in cases where no invitation was sent to the applicant "because indications allowing the applicant to be contacted by the Office have not been filed", it is proposed to apply that time limit to all cases where no invitation has been sent to the

[Rule 20.7, continued]

applicant. It is proposed that the starting point for the time limit under item (ii) should, in all cases (irrespective of whether no invitation was sent to the applicant in relation to a defect, a missing element or a missing part), remain the date on which one or more elements referred to in Article 11(1) were first received by the receiving Office, and not be changed, in relation to the correction of a defect, to the date on which all of the requirements of Article 11(1) are fulfilled, as was suggested during the fifth session of the Working Group. Alternative time limits have been retained in square brackets for further consideration by the Working Group (see the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraphs 103 and 104).]

20.8 Incompatibility With National Laws

(a) If, on [date of adoption of these modifications by the PCT Assembly], any of Rules 20.3(a)(ii) and (b)(ii), 20.5(a)(ii) and (d), and 20.6 are not compatible with the national law applied by the receiving Office, the Rules concerned shall not apply to an international application filed with that receiving Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [three months from the date of adoption of these modifications by the PCT Assembly]. The information received shall be promptly published by the International Bureau in the Gazette.

[COMMENT: See the summary of the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraph 91), and paragraph 39 in the main body of this document. Note that a Contracting State could only take advantage of the reservation provision if its national law contained provisions addressed to its national Office in its capacity as a PCT receiving Office (and not only in its capacity as a designated Office) which were not compatible with the proposed amendments of the PCT Regulations (a reservation provision for designated Offices is contained in proposed new paragraph (c), below). Note further that a receiving Office which makes such reservation and does not apply Rules 20.3(a)(ii) and (b)(ii), 20.5(a)(ii) and (d), and 20.6 would have to accord as the international filing date the date on which the missing element referred to in Article 11(1)(iii)(d) or (e) was received by the receiving Office in accordance with Rule 20.3(b)(i), or accord as the international filing date the date on which the missing part of the description, claims or drawings was received by the receiving Office in accordance with or Rule 20.5(b) or (c), as the case may be.]

[Rule 20.8, continued]

(b) If, on [date of adoption of these modifications by the PCT Assembly], any of Rules 20.3(a)(ii) and (b)(ii), 20.5(a)(ii) and (d), and 20.6 are not compatible with the national law applied by the designated Office, the Rules concerned shall not apply in respect of that Office in relation to an international application in respect of which the acts referred to in Article 22 have been performed before that Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [three months from the date of adoption of these modifications by the PCT Assembly]. The information received shall be promptly published by the International Bureau in the Gazette.

[COMMENT: See the summary of the Chair of the sixth session of the Working Group, document PCT/R/WG/6/12, paragraph 63) and paragraph 39 in the main body of this document. Note that a designated Office which makes a reservation and does not apply Rules 20.3(a)(ii) and (b)(ii), 20.5(a)(ii) and (d), and 20.6 would have to accord as the international filing date the date on which the missing element referred to in Article 11(1)(iii)(d) or (e) was received by the receiving Office in accordance with Rule 20.3(b)(i), or accord as the international filing date the date on which the missing part of the description, claims or drawings was received by the receiving Office in accordance with or Rule 20.5(b) or (c), as the case may be.]

20.9 Certified Copy for the Applicant

~~Against payment of a fee, the receiving Office shall furnish to the applicant, on request, certified copies of the international application as filed and of any corrections thereto.~~

[COMMENT: It is proposed to move the content of present Rule 20.9 to proposed new Rule 21.2 (see below) so as to leave Rule 20 to deal only with questions of according of the international filing date.]

Rule 21

Preparation of Copies

21.1 [No change]

21.2 Certified Copy for the Applicant

Against payment of a fee, the receiving Office shall furnish to the applicant, on request,
certified copies of the international application as filed and of any corrections thereto.

[COMMENT: See the Comment on Rule 20.9 as proposed to be deleted, above. It is proposed delete present Rule 20.9 (see above) and to move its contents to proposed new Rule 21.2.]

Rule 22

Transmittal of the Record Copy and Translation

22.1 Procedure

(a) [No change]

(b) If the International Bureau has received a copy of the notification under Rule 20.2(c) ~~20.5(e)~~ but is not, by the expiration of 13 months from the priority date, in possession of the record copy, it shall remind the receiving Office that it should transmit the record copy to the International Bureau promptly.

(c) If the International Bureau has received a copy of the notification under Rule 20.2(c) ~~20.5(e)~~ but is not, by the expiration of 14 months from the priority date, in possession of the record copy, it shall notify the applicant and the receiving Office accordingly.

[COMMENT: The proposed renumbering is consequential on the proposed renumbering of present Rule 20.5 above.]

(d) to (h) [No change]

22.2 and 22.3 [No change]

Rule 26

**Checking by, and Correcting Before, the Receiving Office of Certain Elements of the
International Application**

26.1 Invitation Under Article 14(1)(b) to Correct Time limit for Check

(a) The receiving Office shall issue the invitation to correct provided for in Article 14(1)(b) as soon as possible, preferably within one month from the receipt of the international application. In the invitation, the receiving Office shall invite the applicant to furnish the required correction, and give the applicant the opportunity to make observations, within the time limit under Rule 26.2.

[COMMENT: The title is proposed to be amended so as to correctly cover the subject matter of paragraph (a). See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 69; see also PLT Article 6(7).]

(b) If the receiving Office issues an invitation to correct the defect referred to in Article 14(1)(a)(iii) or (iv) (missing title or missing abstract), it shall notify the International Searching Authority accordingly.

[COMMENT: It is proposed to move the content of present paragraph (b) to the Administrative Instructions.]

26.2 Time Limit for Correction

The time limit referred to in Rule 26.1 Article 14(1)(b) shall be reasonable under the circumstances and shall be [one month] [two months] fixed in each case by the receiving Office. It shall not be less than one month from the date of the invitation to correct. It may be extended by the receiving Office at any time before a decision is taken.

[COMMENT: See PLT Article 6(7) and PLT Rule 6(1). The time limits have been retained in square brackets for further consideration by the Working Group (see the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraphs 103 and 104).]

26.2bis to 26.3bis [No change]

26.3ter Invitation to Correct Defects Under Article 3(4)(i)

(a) Where the abstract or any text matter of the drawings is filed in a language which is different from the language of the description and the claims, the receiving Office shall, unless

(i) and (ii) [No change]

invite the applicant to furnish a translation of the abstract or the text matter of the drawings into the language in which the international application is to be published. Rules 26.1(a), 26.2, 26.3, 26.3bis, 26.5 and 29.1 shall apply *mutatis mutandis*.

[Rule 26.3ter(a), continued]

[COMMENT: The proposed renumbering is consequential on the proposed renumbering of present Rule 26.1(a), above.]

(b) [No change]

(c) Where the request does not comply with Rule 12.1(c), the receiving Office shall invite the applicant to file a translation so as to comply with that Rule. Rules 3, 26.1(a), 26.2, 26.5 and 29.1 shall apply *mutatis mutandis*.

[COMMENT: The proposed renumbering is consequential on the proposed renumbering of present Rule 26.1(a) above.]

(d) [No change]

26.4 [No change]

26.5 *Decision of the Receiving Office*

The receiving Office shall decide whether the applicant has submitted the correction within the applicable time limit under Rule 26.2, and, if the correction has been submitted within that time limit, whether the international application so corrected is or is not to be considered withdrawn, provided that no international application shall be considered

[Rule 26.5, continued]

withdrawn for lack of compliance with the physical requirements referred to in Rule 11 if it complies with those requirements to the extent necessary for the purpose of reasonably uniform international publication.

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 70.]

26.6 *Missing Drawings*

(a) ~~If, as provided in Article 14(2), the international application refers to drawings which in fact are not included in that application, the receiving Office shall so indicate in the said application.~~

[COMMENT: It is proposed to move the content of paragraph (a) to the Administrative Instructions.]

(b) ~~The date on which the applicant receives the notification provided for in Article 14(2) shall have no effect on the time limit fixed under Rule 20.2(a)(iii).~~

[COMMENT: The proposed deletion of present paragraph (b) is consequential on the proposed amendment of Rule 20 (see above).]

Rule 48

International Publication

48.1 [No change]

48.2 *Contents*

(a) [No change]

(b) Subject to paragraph (c), the front page shall include:

(i) to (iii) [No change]

(iv) an indication that the request contains any declaration referred to in Rule 4.17 which was received by the International Bureau before the expiration of the time limit under Rule 26*ter.1*;

(v) where applicable, an indication that the international filing date was accorded by the receiving Office under Rule 20.3(b)(ii) or 20.5(d) on the basis of the incorporation by reference under Rules 4.18 and 20.6 of an element or part, together with an indication as to whether the applicant, for the purposes of Rule 20.6(a)(ii), relied on compliance with Rule 17.1(a), (b) or (b-bis) in relation to the priority document or on a separately submitted copy of the earlier application concerned.

[Rule 48.2(b)(v), continued]

[COMMENT: See paragraphs 32 to 37 in the main body of this document and the Comment on proposed new Rule 20.6(b), above.]

(c) to (i) [No change]

48.3 to 48.6 [No change]

[COMMENT: Note that Rule 48 is proposed to be further amended in the context of proposed amendments of the Regulations relating to the restoration of the right of priority (see document PCT/R/WG/7/3, relating to the rectification of obvious mistakes (see document PCT/R/WG/7/6) and relating to international publication and the PCT Gazette in electronic form (see document PCT/R/WG/7/8).]

Rule 51

Review by Designated Offices

51.1 Time Limit for Presenting the Request to Send Copies

The time limit referred to in Article 25(1)(c) shall be two months computed from the date of the notification sent to the applicant under Rule 20.4(i) ~~20.7(i)~~, 24.2(c) or 29.1(ii).

[COMMENT: The proposed renumbering is consequential on the proposed renumbering of present Rule 20.7 above.]

51.2 Copy of the Notice

Where the applicant, after having received a negative determination under Article 11(1), requests the International Bureau, under Article 25(1), to send copies of the file of the purported international application to any of the named Offices he has attempted to designate, he shall attach to his request a copy of the notice referred to in Rule 20.4(i) ~~20.7(i)~~.

[COMMENT: The proposed renumbering is consequential on the proposed renumbering of present Rule 20.7 above.]

51.3 [No change]

Rule 51bis

Certain National Requirements Allowed Under Article 27

51bis.1 Certain National Requirements Allowed

(a) to (d) [No change]

(e) The national law applicable by the designated Office may, in accordance with Article 27, require the applicant to furnish a translation of the priority document, provided that such a translation may only be required:

(i) where the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable; or

(ii) where the international filing date has been accorded by the receiving Office under Rule 20.3(b)(ii) or 20.5(d) on the basis of the incorporation by reference under Rules 4.18 and 20.6 of an element or part, for the purposes of determining under Rule 82ter.1(b) whether that element or part is completely contained in the priority document concerned.

[COMMENT: It is proposed to amend Rule 51bis.1(e) so as to permit a designated or elected Office to require the applicant to furnish a translation of the priority document for the purposes of making a finding, under proposed Rule 82ter.1(b) (see below) whether an element or part which has been incorporated by reference was completely contained in the priority document. Note that the sanction which would apply if the applicant failed to furnish a translation of the priority document required under the applicable national law would be a matter for that national law.]

[Rule 51bis.1, continued]

(f) If, on [date of adoption of these modifications by the PCT Assembly] ~~March 17, 2000~~, the proviso in paragraph (e)(i) or (ii) is not compatible with the national law applied by the designated Office, the that proviso concerned shall not apply in respect of that Office for as long as that proviso continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [three months from the date of adoption of these modifications by the PCT Assembly] ~~November 30, 2000~~. The information received shall be promptly published by the International Bureau in the Gazette.

[COMMENT: The proposed amendment of paragraph (f) is consequential on the proposed amendment of paragraph (e) (see above). A decision by the Assembly may be necessary to ensure that transitional reservations that were made under existing paragraph (f) with regard present paragraph (e) (renumbered paragraph (e)(i)) continue to be effective.]

51bis.2 and 51bis.3 [No change]

Rule 55

Languages (International Preliminary Examination)

55.1 [No change]

55.2 *Translation of International Application*

(a) [No change] Where neither the language in which the international application is filed nor the language in which the international application is published is accepted by the International Preliminary Examining Authority that is to carry out the international preliminary examination, the applicant shall, subject to paragraph (b), furnish with the demand a translation of the international application into a language which is both:

(i) a language accepted by that Authority, and

(ii) a language of publication.

(a-bis) A translation of the international application into a language referred to in paragraph (a) shall include any element referred to in Article 11(1)(iii)(d) or (e) furnished by the applicant under Rule 20.3(b) or 20.6(a) and any part of the description, claims or drawings furnished by the applicant under Rule 20.5(b) or 20.6(a).

[COMMENT: It is proposed to add new paragraph (a-bis) so as to ensure that, in the rare case that the applicant has to furnish a translation of the international application to the International Preliminary Examining Authority under Rule 55.2(a), that translation includes any element referred to in Article 11(1)(iii)(d) or (e) and any part of the description, claims or drawings furnished by the applicant under Rule 20. Note that Rule 55.2 would have to be further amended should it be agreed to amend the Regulations by adding provisions concerning international publication in multiple languages, as is proposed in PCT/R/WG/7/4.]

[Rule 55.2, continued]

(b) [No change]

(c) If the requirements of paragraphs (a) and (a-bis) are requirement of paragraph (a) is not complied with and paragraph (b) does not apply, the International Preliminary Examining Authority shall invite the applicant to furnish the required translation within a time limit which shall be reasonable under the circumstances. That time limit shall not be less than one month from the date of the invitation. It may be extended by the International Preliminary Examining Authority at any time before a decision is taken.

(d) If the applicant complies with the invitation within the time limit under paragraph (c), the said requirements requirement shall be considered to have been complied with. If the applicant fails to do so, the demand shall be considered not to have been submitted and the International Preliminary Examining Authority shall so declare.

[COMMENT: The proposed changes to paragraphs (c) and (d) are consequential on the proposed addition of new paragraph (a-bis).]

55.3 [No change]

Rule 82ter

Rectification of Errors Made

by the Receiving Office or by the International Bureau

82ter.1 Errors Concerning the International Filing Date and the Priority Claim

(a) If the applicant proves to the satisfaction of any designated or elected Office that the international filing date is incorrect due to an error made by the receiving Office or that the priority claim has been erroneously considered by the receiving Office or the International Bureau not to have been made and if the error is an error such that, had it been made by the designated or elected Office itself, that Office would rectify it under the national law or national practice, the said Office shall rectify the error and shall treat the international application as if it had been accorded the rectified international filing date or as if the priority claim had not been considered not to have been made.

[COMMENT: Note that present Rule82ter.1 (Rule 82ter.1(a) as proposed to be amended) is proposed to be further amended in the context of proposed amendments of the Regulations relating to the restoration of the right of priority (see PCT/R/WG/7/3).]

(b) Where the international filing date was accorded by the receiving Office under Rule 20.3(b)(ii) or 20.5(d) on the basis of the incorporation by reference under Rules 4.18 and 20.6 of an element or part but the applicant has not complied with Rule 17.1(a), (b) or (b-bis) in relation to the priority document or the designated or elected Office finds that the element or part is not completely contained in the priority document concerned, the designated or elected Office may, subject to paragraph (c), treat the international application as if the international filing date had been accorded under Rule 20.3(b)(i) or 20.5(b), or corrected under 20.5(c), as applicable, provided that Rule 17.1(c) shall apply *mutatis mutandis*.

[Rule 82ter.1(b), continued]

[COMMENT: See paragraph 37 in the main body of this document. See also the summary of the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraphs 102 and 103), and Note 5.21 of the Explanatory Notes on PLT Article 5(6)(b) which states that, where it is subsequently determined, for example in the course of substantive examination, that the missing part of the description or missing drawing was not completely contained in the earlier application as required under PLT Rule 2(4)(ii), the Office may rescind the filing date accorded under that Rule and re-accord it under PLT Article 5(6)(a).]

(c) The designated or elected Office shall not treat the international as if the international filing date had been accorded under Rule 20.3(b)(i) or 20.5(b), or corrected under 20.5(c), without giving the applicant the opportunity to make observations on the intended treatment, or to make a request under paragraph (d), within a time limit which shall be reasonable under the circumstances.

(d) Where the designated or elected Office, in accordance with paragraph (c), has notified the applicant that it intends to treat the international application as if the international filing date had been corrected under Rule 20.5(c), the applicant may, in a notice submitted to that Office within the time limit referred to in paragraph (c), request that the missing part concerned be disregarded for the purposes of national processing before that Office, in which case that part shall be considered not to have been furnished and that Office shall not treat the international application as if the international filing date had been corrected.

[COMMENT: Where a designated or elected Office, in accordance with paragraph (b), intends to treat the international application as if the international filing date had been corrected under Rule 20.5(c) to the date on which the receiving Office received the missing part, the applicant should have an opportunity, as during the international phase (see

[Rule 82ter.1(d), continued]

Rule 20.5(e) as proposed to be amended) to request that the missing part concerned be disregarded, in which case the missing part would be considered not to have been furnished and the designated or elected Office must treat the international application as if the international filing date had not been corrected.]

[Annex II follows]

ANNEX II

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:

MISSING ELEMENTS AND PARTS OF THE INTERNATIONAL APPLICATION

RULE 20 “CLEAN” COPY⁴

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20.1 <i>Determination Under Article 11(1)</i>	2
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⁴ Comments on particular provisions appear only in the “marked-up” copy contained in Annex I.

Rule 20 [“clean” copy]

International Filing Date

20.1 *Determination Under Article 11(1)*

- (a) Promptly after receipt of the papers purporting to be an international application, the receiving Office shall determine whether the papers fulfill the requirements of Article 11(1).
- (b) For the purposes of Article 11(1)(iii)(c), it shall be sufficient to indicate the name of the applicant in a way which allows the identity of the applicant to be established even if the name is misspelled, the given names are not fully indicated, or, in the case of legal entities, the indication of the name is abbreviated or incomplete.
- (c) For the purposes of Article 11(1)(ii), it shall be sufficient that the part which appears to be a description (other than any sequence listing part thereof) and the part which appears to be a claim or claims be in a language accepted by the receiving Office under Rule 12.1(a).
- (d) If, on October 1, 1997, paragraph (c) is not compatible with the national law applied by the receiving Office, paragraph (c) shall not apply to that receiving Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1997. The information received shall be promptly published by the International Bureau in the Gazette.

20.2 Positive Determination Under Article 11(1)

- (a) If the receiving Office determines that, at the time of receipt of the papers purporting to be an international application, the requirements of Article 11(1) were fulfilled, the receiving Office shall accord as the international filing date the date of receipt of the international application.
- (b) The receiving Office shall stamp the request of the international application which it has accorded an international filing date as prescribed by the Administrative Instructions. The copy whose request has been so stamped shall be the record copy of the international application.
- (c) The receiving Office shall promptly notify the applicant of the international application number and the international filing date. At the same time, it shall send to the International Bureau a copy of the notification sent to the applicant, except where it has already sent, or is sending at the same time, the record copy to the International Bureau under Rule 22.1(a).

20.3 *Defects Under Article 11(1)*

(a) Where, in determining whether the papers purporting to be an international application fulfill the requirements of Article 11(1), the receiving Office finds that any of the requirements of Article 11(1) are not, or appear not to be, fulfilled, it shall promptly invite the applicant, as applicable and at the applicant's option:

- (i) to furnish the required correction under Article 11(2); or
- (ii) where the requirements concerned are those relating to an element referred to in Article 11(1)(iii)(d) or (e), to confirm in accordance with Rule 20.6(a) that the element is incorporated by reference under Rule 4.18;

and to make observations, if any, within the applicable time limit under Rule 20.7. If that time limit expires after the expiration of 12 months from the filing date of any application whose priority is claimed, the receiving Office shall call that circumstance to the attention of the applicant.

(b) Where, following an invitation under paragraph (a) or otherwise:

- (i) the applicant furnishes to the receiving Office the required correction under Article 11(2) after the date of receipt of the purported international application but on a later date falling within the applicable time limit under Rule 20.7, the receiving Office shall accord that later date as the international filing date and proceed as provided in Rule 20.2(b) and (c);

[Rule 20.3(b), continued]

(ii) an element referred to in Article 11(1)(iii)(d) or (e) is, under Rule 20.6(b), considered to have been contained in the international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, the receiving Office shall accord as the international filing date the date on which all of the requirements of Article 11(1) are fulfilled and proceed as provided in Rule 20.2(b) and (c).

(c) If the receiving Office later discovers, or on the basis of the applicant's reply realizes, that it has erred in issuing an invitation under paragraph (a) since the requirements of Article 11(1) were fulfilled when the papers were received, it shall proceed as provided in Rule 20.2.

20.4 Negative Determination Under Article 11(1)

If the receiving Office does not receive, within the applicable time limit under Rule 20.7, a correction or confirmation referred to in Rule 20.3(b), or if a correction or confirmation has been received but the application still does not fulfill the requirements of Article 11(1), the receiving Office shall:

- (i) promptly notify the applicant that the application is not and will not be treated as an international application and shall indicate the reasons therefor;
- (ii) notify the International Bureau that the number it has marked on the papers will not be used as an international application number;
- (iii) keep the papers constituting the purported international application and any correspondence relating thereto as provided in Rule 93.1; and
- (iv) send a copy of the said papers to the International Bureau where, pursuant to a request by the applicant under Article 25(1), the International Bureau needs such a copy and specially asks for it.

20.5 *Missing Parts*

(a) Where, in determining whether the papers purporting to be an international application fulfill the requirements of Article 11(1), the receiving Office finds that a part of the description, claims or drawings is or appears to be missing, including the case where all of the drawings are or appear to be missing but not including the case where an entire element referred to in Article 11(1)(iii)(d) or (e) is or appears to be missing, it shall promptly invite the applicant, as applicable and at the applicant's option:

- (i) to complete the purported international application by furnishing the missing part;
- (ii) to confirm, in accordance with Rule 20.6(a), that the part was incorporated by reference under Rule 4.18;

and to make observations, if any, within the applicable time limit under Rule 20.7. If that time limit expires after the expiration of 12 months from the filing date of any application whose priority is claimed, the receiving Office shall call that circumstance to the attention of the applicant.

[Rule 20.5, continued]

(b) Where, following an invitation under paragraph (a) or otherwise, the applicant furnishes to the receiving Office, on or before the date on which all of the requirements of Article 11(1) are fulfilled but within the applicable time limit under Rule 20.7, a missing part referred to in paragraph (a) so as to complete the international application, that part shall be included in the application and the receiving Office shall accord as the international filing date the date on which all of the requirements of Article 11(1) are fulfilled and proceed as provided in Rule 20.2(b) and (c).

(c) Where, following an invitation under paragraph (a) or otherwise, the applicant furnishes to the receiving Office, after the date on which all of the requirements of Article 11(1) were fulfilled but within the applicable time limit under Rule 20.7, a missing part referred to in paragraph (a) so as to complete the international application, that part shall be included in the application, and the receiving Office shall correct the international filing date to the date on which the receiving Office received that part and proceed as provided for in the Administrative Instructions.

(d) Where, following an invitation under paragraph (a) or otherwise, a part referred to in paragraph (a) is, under Rule 20.6(b), considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, the receiving Office shall accord as the international filing date the date on which all of the requirements of Article 11(1) are fulfilled and proceed as provided in Rule 20.2(b) and (c).

[Rule 20.5, continued]

(e) Where the international filing date has been corrected under paragraph (c), the applicant may, in a notice submitted to the receiving Office within one month from the date of the notification under paragraph (c), request that the missing part concerned be disregarded, in which case the missing part shall be considered not to have been furnished and the correction of the international filing date under that paragraph shall be considered not to have been made, and the receiving Office shall proceed as provided for in the Administrative Instructions.

20.6 *Confirmation of Incorporation by Reference of Elements and Parts*

(a) The applicant may submit to the receiving Office, within the applicable time limit under Rule 20.7, a written notice confirming that an element or part is incorporated by reference in the international application under Rule 4.18, accompanied by:

- (i) a sheet or sheets embodying the element or part concerned;
- (ii) where the applicant has not already complied with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document, a copy of the earlier application as filed;
- (iii) where the earlier application is not in the same language as the international application as filed, a translation of the earlier application into that language or, where a translation of the application is required under Rule 12.3(a) or 12.4(a), a translation of the earlier application into both the language of the application as filed and the language of that translation; and
- (iv) in the case of a part of the description, claims or drawings, an indication as to where that part is contained in the earlier application.

[Rule 20.6, continued]

(b) Where the receiving Office finds that the requirements of Rule 4.18 and paragraph (a) have been complied with and that the element or part referred to in paragraph (a) is completely contained in the earlier application concerned, that element or part shall be considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office.

20.7 *Time Limit*

The applicable time limit referred to in Rules 20.3(a), 20.3(b), 20.4, 20.5(a), (b) and (c), and 20.6(a) shall be:

- (i) where an invitation under Rule 20.3(a) or 20.5(a), as applicable, was sent to the applicant, [one month] [two months] from the date of the invitation;
- (ii) where no such invitation was sent to the applicant, [one month] [two months] from the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office;

provided that any correction under Article 11(2), or any confirmation under Rule 20.6(a) of the incorporation by reference of an element referred to in Article 11(1)(iii)(d) or (e), that is received by the receiving Office after the expiration of the applicable time limit under this Rule but before that Office sends a notification to the applicant under Rule 20.4(i) shall be taken into account in determining whether the papers purporting to be an international application fulfill the requirements under Article 11(1).

20.8 *Incompatibility With National Laws*

(a) If, on [date of adoption of these modifications by the PCT Assembly], Rules 20.3(a)(ii) and (b)(ii), 20.5(a)(ii) and (d), and 20.6 are not compatible with the national law applied by the receiving Office, those Rules shall not apply to an international application filed with that receiving Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [three months from the date of adoption of these modifications by the PCT Assembly]. The information received shall be promptly published by the International Bureau in the Gazette.

(b) If, on [date of adoption of these modifications by the PCT Assembly], Rules 20.3(a)(ii) and (b)(ii), 20.5(a)(ii) and (d), and 20.6 are not compatible with the national law applied by the designated Office, those Rules shall not apply in respect of that Office in relation to an international application in respect of which the acts referred to in Article 22 have been performed before that Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [three months from the date of adoption of these modifications by the PCT Assembly]. The information received shall be promptly published by the International Bureau in the Gazette.

[End of Annex II and of document]